SUPREME COURT STATE OF NEW YORK
COUNTY OF NEW YORK

SCIENCEFRIDAY, INC.,	Index No:
	SUMMONS
Plaintiff,	Basis for place of trial is Long Arm Jurisdiction
-against-	
BOB ENYART, INC., ROBERT A. ENYART, and FRED WILLIAMS,	Date Filed:
Defendants.	

To the above-named defendants:

You are hereby summoned and required to serve upon plaintiff's attorney, at his address stated below, your respective answers to the attached complaint. If this summons was personally served upon you in the State of New York, the answer must be served within twenty days after such service of the summons, excluding the date of service.

If the summons was not personally delivered to you within the State of New York, the answer must be served within thirty days after service of the summons is complete as provided by law. If you do not serve an answer to the attached complaint within the applicable time limitation stated above, a judgment may be entered against you, by default, for the relief demanded in the complaint, without further notice to you.

The action will be heard in the Supreme Court of the State of New York, in and for the County of NEW YORK.

Dated: November 2, 2012
New York, New York

THE LAW OFFICE OF
ANTHONY N. ELIA, P.C.

By: _____

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SUPREME COURT STATE OF NEW YORK
COUNTY OF NEW YORK

SCIENCEFRIDAY, INC.,	Index No:
	COMPLAINT
Plaintiff,	
-against-	
BOB ENYART, INC, ROBERT A. ENYART, and FRED WILLIAMS,	
Defendants.	

As and for its complaint Plaintiff, SCIENCEFRIDAY, INC., ("ScienceFriday" or "Plaintiff") by The Law Offices of Anthony N. Elia, P.C., respectfully alleges as follows:

NATURE OF THE ACTION

1. This is a trademark action and cybersquatting action brought by ScienceFriday, Inc., to protect it's federally registered rights in its radio program "Science Friday." The Science Friday program is a weekly science talk show and podcast broadcast live over public radio stations nationwide and via the Internet.

2. Plaintiff brings this action against the BOB ENYART, INC, and ROBERT ENYART ("Bob Enyart") (collectively "Enyart Defendants") and FRED WILLIAMS ("Williams") for their use of the name "Real Science Friday" in connection with their radio program. The Defendants distribute the infringing programs via radio, Internet stream and as podcasts.

3. Plaintiff is the only "real" Science Friday radio program ("Science Friday"). Now in its 22nd year of broadcast, the show airs on over 300 NPR stations and Sirus Satellite, attracting 1.4 million listeners with the live broadcast, 600,000 podcast downloads,

and another 60,000 unique website visitors every week. Science Friday has 255,507 followers on Twitter and over 60,000 "likes" on Facebook (Bob Enyart Live on Facebook has 471 likes). Science Friday is hosted by veteran Nation Public Radio (NPR) science correspondent and award-winning TV journalist Ira Flatow.

4. By contrast, Bob Enyart is a conservative Christian pastor of a church in Colorado. Enyart also has an AM radio program "Bob Enyart Live." Williams is a co-host of the show. When the radio show discusses their theological perspective on science, the Defendants refers to the program as "Real Science Friday." Defendants broadcast the infringing radio programs over the AM radio in Colorado, stream the program over the Internet from their website (www.kgov.com), and distribute it as podcasts through various podcast services including iTunes. Defendants have also created collections of the infringing audio program which they sell on compact discs from their website.

5. Defendants also use the Infringing Name on You Tube videos.

6. In addition, Defendants have, in bad faith, registered the domain name www.realsciencefriday.com ("Infringing Domain") and are using it to drive traffic to the Enyart's website, kgov.com, ("Enyart's Site") for the purpose of increasing Enyart's Site's search engine ranking for searches made for the Plaintiff's mark.

7. The Infringing Domain, is nearly identical to Plaintiff's Marks, and was registered for the express purpose of confusing the public, diverting ScienceFriday's listeners and to trade on Science Friday's immense popularly and good will which ScienceFriday has as built up over two decades.

8. Based on the above, Plaintiff prays that the relief requested below be granted in its entirety.

PARTIES

9. ScienceFriday, Inc. is a Delaware Corporation which is authorized to do business in the State of New York.

10. ScienceFriday, Inc. has a place of business in New York County.

11. The Science Friday radio program has been on the air the since 1991.

12. Bob Enyart is a natural person and citizen of Colorado.

13. Bob Enyart is a "conservative" Christian pastor and radio show host.

14. Bob Enyart has introduced himself on his audio program as "America's right-wing, religious fanatic, homophobic, anti-choice talk show host."

15. The Denver Post wrote an article in 1995 about Bob Enyart and some of his controversial views (Exhibit "A").

16. Bob Enyart is presently encouraging a ban of Starbucks' products in retaliation for Starbuck's support of gay rights legislation: http://www.youtube.com/watch?v=iw4Qw7IuMWw&list=FLJoQPOb6Q7e2D6xVie1ivlQ&index=2&feature=plcp .

17. Fred Williams is a natural person and citizen of Colorado.

18. Fred Williams is co-host of the infringing radio program.

19. Bob Enyart, Inc. is a Colorado Corporation with a place of business in Arvada Colorado.

20. Bob Enyart is an officer of Bob Enyart, Inc.

21. Bob Enyart is a director of Bob Enyart, Inc.

22. Bob Enyart is a principal of Bob Enyart, Inc.

23. Bob Enyart is the sole principal of Bob Enyart, Inc.

Jurisdiction and Venue

24. This Court has personal jurisdiction over Defendants upon the basis that they are and have transacted business within the state and/or have committed tortious act(s) within the state, and/or have committed a tortious act(s) without the state causing injury to the Plaintiff which is within the state and: (i) defendants do or solicit business in a persistent course of conduct and/or derives substantial revenue from goods used and/or services rendered in the state or and regularly streams; and/or, (ii) expects to the acts to have consequences in the state and derives substantial revenue from interstate or international commerce.

25. Venue properly lies in this New York County under CPLR § 503(c) upon the basis that Plaintiff's principal place of business is New York County.

The Science Friday Marks

26. Plaintiff has used the Science Friday mark since 1991 in connection with its highly regarded and popular radio program. Over the last two decades the public has become familiar with the Science Friday mark and recognize it to be emblematic of Science Friday's high quality service. Plaintiff owns and has used in commerce all relevant times the following registrations for its marks:

Reg. Number	Word Mark	Goods/Services	Reg. Date
2827980	Science Friday (word mark)	Radio programs in the field of science	3/30/2004
4075693	Science Friday (logo)	Production of audio programs in the field of science, and same via Internet	12/27/2011
4078532	Science Friday (logo)	Production of audio programs in the field of science, and same via	1/23/2012

		Internet	
3458093	SciFri (word mark)	Production and distribution of a radio program in the field of science	7/1/2008
4142150	Every Day is Science Friday (word mark)	Prerecorded audio programs in the field of science accessible over the Internet	5/15/ 2012

27. Each such registration is valid, subsisting and un-cancelled and a true copy of each are attached hereto collectively as Exhibit "B." ("Science Friday Marks").

Defendants' Infringement

28. Defendants have adopted the name "Real Science Friday" and are making a number of infringing uses of it in commerce.

29. The main page of Defendants website, www.kgov.com prominently features three links for the "Real Science Friday" audio content (Exhibit "C"). One navigation button links to a Real Science Friday dedicated page where a user can access the Infringing audio-programs (Exhibit "D," http://kgov.com/real-science-friday). Another button in the right column "Subscribe to the Real Science Friday podcast" leads to a page that permits a user to subscribe to the infringing audio-content as podcasts using a number of podcast services including podnova.com, newsgator, netvibes, my yahoo, google+, and iTunes (Exhibit "E," http://feeds.feedburner.com/RealScienceFriday.

30. The third infringing use on the main page is a prominent "RSL" / "Real Science Friday" logo which navigates to the site's dedicated Real Science Friday webpage (Exhibit "D," http://kgov.com/real-science-friday).

31. Each infringing audio-program has its own page. For example, the September 14, 2012 program "RSF: On How to Date a Dinosaur" is found at http://kgov.com/dating-a-

dinosaur (Exhibit "F") is twenty-eight minutes and fifty seconds long and is available for download and stream. The program explains that dinosaurs aren't really millions of years old.

32. The Enyart site also maintains an online store where Real Science Friday programs are sold on compact disc (Exhibit "G"). http://www.kgovstore.com/servlet/Categories?category=All+Products%3AScience .

33. In addition to their website, Defendants distribute the infringing audio-programs via podcast services like iTunes. Defendants maintain an iTunes account found at the truncated address[1] at: http://bit.ly/Oqpggv (Exhibit "H"). Disturbingly, at the bottom of the infringing page, in the "Listeners also subscribed to" section, is the logo for "SCIFRIenES" logo which is Plaintiff's own Spanish language Science Friday podcast. This demonstrates the potential for confusion between Defendants infringing program and the actual Science Friday program.

34. When a search for Plaintiff's trademark is done on iTunes, the Defendants' infringing mark is retrieved and is prominently displayed (Exhibits "I" and "J").

35. The fact that individuals searching for "Science Friday" will retrieve the Defendants infringing program on iTunes is evidence of, among other things, the likelihood of confusion, as well the intent of the Defendants.

36. Defendants' bad intent is also established by the fact that Williams registered the domain www.realsciencefriday.com (Exhibit "K"). There is no webpage on the Infringing Domain. The Infringing Domain is "pointed" to Enyart's Site so all visitors to the Infringing Domain name are automatically transferred to the Enyart website at http://kgov.com/real-science-friday (Exhibit "D"). This is significant because search

[1] The full address is: http://itunes.apple.com/us/podcast/real-science-friday/id519511857

engines read domain names and give weight to them in assigning ranking to websites. Upon information and belief, the Infringing Domain www.realsciencefriday.com will achieve certain consideration that http://kgov.com/real-science-friday would not for a search for "Science Friday." Thus, pointing the Infringing Domain to the Enyart's Site boosts the latter's rank. Thus, Williams' use of the Infringing Domain to direct traffic to Kgov.com is intended to steal Plaintiff's search engine traffic and to promote the infringing program.

37. Indeed, a Google search for "Science Friday" ranks Defendants' http://kgov.com/real-science-friday at the very top of the second page – and above many legitimate results (Exhibit "L").

38. Defendants also use the Infringing Name on YouTube videos such as the one featuring Enyart and Williams dressed as cavemen which can be found at the following truncated address[2]: http://bit.ly/SANxky (Exhibit "M").

39. Upon information and belief, Bob Enyart participated personally in the decision to name the infringing radio program the "Real Science Friday."

40. Upon information and belief, it is Defendants desire to continue to encroach on the Plaintiff's trademarks to steal Plaintiff's decades of goodwill.

AS AND FOR A FIRST CAUSE OF ACTION
(Trademark/Trade name Infringement and Unfair Competition)

41. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 40 of this Complaint as if more fully set forth at length herein.

42. Defendants conduct as aforesaid constitutes trademark infringement in that it is use in commerce without the consent of the registrant, of a reproduction, copy or colorable imitation of the registered marks in connection with the sale, offering for sale,

[2] The full address is: http://www.youtube.com/watch?v=XnvQmXVGCFU&list=FLJoQPOb6Q7e2D6xVielivlQ&index=1&feature=plcp

distribution, or advertising of the Science Friday Marks in connection with infringing audio programs which is likely to cause confusion, or to cause mistake or to deceive as to the affiliation, connection or association of the Defendants with Plaintiff or as to the origin, sponsorship or approval of Defendant's or its customers' good and services by Defendants in contravention of Section 32 of the Trademark Act, 15 U.S.C. § 1114.

43. Upon information and belief, the aforesaid acts constitute willful infringement.

44. By reason of the acts of the Defendants herein, Plaintiff has suffered and is suffering and unless Defendant is restrained will continue to suffer, irreparable injury for which there is no adequate remedy at law.

45. Plaintiff is entitled to damages for Defendants past infringement and the profits realized from Defendants' infringing conduct, both in amounts to be determined at trial and an injunction to prevent continued and future infringement of its trademark rights.

AS AND FOR A SECOND CAUSE OF ACTION
(False Advertising / False Representation 15 U.S.C. § 1125)

46. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 45 of this Complaint as if more fully set forth at length herein.

47. Defendants' conduct as aforesaid constitutes false representation and/or false advertising in that it is and/or encourages the use in commerce in connection with goods or services of a word, name, symbol or device, or a combination thereof, which is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Defendants with Plaintiff, or as to the origin, sponsorship or approval of Defendants' goods and services by Plaintiff, in contravention of Section 43 of the Trademark Act, 15 U.S.C. § 1125.

48. As a result of the above, Plaintiff is entitled to an injunction against

Defendants' future false representations and advertising and as well as damages in an amount to be determined at trial.

AS AND FOR A THIRD CAUSE OF ACTION
(Trademark Dilution, 15 U.S.C. § 1125)

49. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 48 of this Complaint as if more fully set forth at length herein.

50. Upon information and belief, the Science Friday Marks are and have been at all relevant times, famous marks within the meaning of Section 43(c)(1) of the Trademark Act, 15 U.S.C.§1125(c)(1).

51. Defendants' conduct as aforesaid constitutes trademark dilution in that it is the use in commerce of a mark that causes the dilution of the distinctive quality of the Science Friday Marks, and the similarity between the Infringing Name and a Plaintiff's Mark that impair the distinctiveness of the famous mark.in contravention of Section 43(c) of the Trademark Act, 15 U.S.C. §1125(c).

AS AND FOR A FOURTH CAUSE OF ACTION
(Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d)(l))

52. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 51 of this Complaint as if more fully set forth at length herein.

53. Notwithstanding Plaintiff's rights to the Plaintiff's Marks, and despite having no legitimate reason to do so, Defendant Williams in concert and cooperation with the Enyart Defendants registered and is using the Infringing Domain in connection with the promotion of the Enyart Site and Defendants' infringing radio programs.

54. Defendants' use of the "Real Science Friday" name in a confusingly similar domain for a competitive service offered to an overlapping customer demographic constitutes a violation of the Anticybersquatting Consumer Protection Act, 15 U.S.C. §

1125(d)(l).

55. Without any legal basis, statutory or otherwise, for asserting rights to advertise or otherwise sell products or services in commerce in conjunction with Plaintiff's famous Marks, Defendant Williams and the Enyart Defendants have conspired and worked in concert to register the Infringing Domain with the bad-faith intent to profit from the goodwill and value associated with the Plaintiff's Marks.

56. Upon information and belief, with full knowledge of Plaintiff's exclusive rights in the Marks, Defendants are attempting to confuse Plaintiff's customers and the public and to divert them to the Infringing Domain and then onto the Enyart Site.

57. Defendants and the Infringing Domain have deliberately harmed, and will continue to harm, the goodwill enjoyed by the Plaintiff's Marks by creating a false association between the genuine products and services provided by Plaintiff and those associated with Defendants.

58. The Infringing Domain is virtually identical to Plaintiff's Marks. Thus, the Infringing Domain is confusingly similar to, and dilutive of, the famous Plaintiff's Marks - and violates Plaintiff's exclusive trademark and service mark rights in the Plaintiff's Marks in the United States.

59. Defendants' registration, trafficking in, and/or use of the Infringing Domain has caused, and is likely to continue to cause, irreparable harm to Plaintiffs goodwill and reputation.

60. Defendant's actions were willful, and Plaintiff has no adequate remedy at law.

61. Defendants' activities as alleged herein constitute a violation of the federal Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d).

62. As a result of Defendants' willful and intentional actions, Plaintiff has

incurred attorneys' fees and costs.

63. As a result of Defendants' willful and intentional actions, Plaintiff has been damaged in an amount to be proven at trial.

AS AND FOR A FIFTH CAUSE OF ACTION
(Deceptive Business / False Advertising Practice N.Y. Gen Business Law §§ 349, 350, 350-a)

64. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 63 of this Complaint as if more fully set forth at length herein.

65. That the foregoing constitutes a violation of the pertinent sections of the General Business Law of the state of New York pertaining to false advertising and deceptive trade practices.

66. As a result of the above, Plaintiff is entitled to an injunction against Defendants' future false representations and advertising and as well as damages and attorneys fees in an amount to be determined.

AS AND FOR A SIXTH CAUSE OF ACTION
(Unfair Competition)

67. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 64 of this Complaint as if more fully set forth at length herein.

68. Defendants' acts described above constitute unfair competition.

69. As a result of the above, Plaintiff is entitled to an injunction against Defendants' unfair competition and as well as damages in an amount to be determined at trial.

PERMANENT INJUNCTION

Based on the foregoing, Plaintiff seeks the imposition of a permanent injunction as detailed herein below:

1. Defendants individually and collectively, and their shareholders, principals, members, officers, directors, agents, servants, representatives, affiliates, subsidiaries, joint venturers, partners and employees and attorneys and all persons in active concert, privity and/or participation with them, or acting in concert with them, should be permanently enjoined from:

a. Using "Science Friday," "SciFri" or any other Science Friday Marks or pending registration in any commercial manner or in connection with: any radio program, audio program, video and/or multi-media display; in any portion or segment of a radio program, audio program, video and/or multi-media display; in any podcast; in any Internet stream of audio, video, or multi-media content; in the production and/or distribution of any radio program, audio program, video and/or multi-media display; in any educational and/or entertainment services, including but not limited to any radio program, audio program, video and/or multi-media display on the topic of science; and/or, in or on any website or webpage or Internet display featuring text, images, audio and/or videos on the topic or in the field of science.

b. Using "Science Friday" or any trademark, service mark, word, phrase, device, expression or logo that is in any manner confusingly similar thereto or a colorable imitation thereof: radio program, audio program,

video and/or multi-media display; in any portion or segment of a radio program, audio program, video and/or multi-media display; in any podcast; in any Internet stream of audio, video, or multi-media content; in the production and/or distribution of any radio program, audio program, video and/or multi-media display; in any educational and/or entertainment services, including, but not limited to, any radio program, audio program, video and/or multi-media display on the topic of science; in or on any website/webpage/Internet display containing text, images, audio and/or videos on the topic of science; in any manner that might cause any member of the public to be confused or to make a mistake or to be deceived or to believe that there is any connection or association between Defendants and Plaintiff;

c. Representing in any fashion or holding themselves out as affiliated in any manner with Plaintiff, with the Science Friday program, with Science Friday, Inc. and/or the Science Friday Initiative.

d. Using the www.realsciencefriday.com domain name for any purpose, including but not limited to: "pointing" to another website or webpage; or to host any material whatsoever; and

e. Using, linking to, transferring, selling, exercising control over, or otherwise owning the Infringing Domain or any other domain name or trademark or service mark that incorporates, in whole or in part, Plaintiff's Marks.

2. Defendants individually and collectively, and their shareholders, principals, members, officers, directors, agents, servants, representatives, affiliates, subsidiaries, joint

venturers, partners and employees and attorneys and all persons in active concert, privity and/or participation with them, or acting in concert with them, should be directed by this permanent injunction to immediately:

a. Turn over to Plaintiff all CDs and/or physical media which bear the mark "Science Friday" and/or any word(s), mark, device or symbol which is confusingly similar, including but not limited to, "Real Science Friday";

b. Delete and remove: all references to, uses of, occurrences of, and/or utterances of, the mark "Science Friday" and/or any word(s), mark, device or symbol which is confusingly similar to it, including, but not limited, to "Real Science Friday" irrespective of form or format (*i.e.*, whether in text, video, audio or multi-media) from:

   i. www.kgov.com and all portions thereof;

   ii. Defendants' iTunes account and pages;

   iii. Defendants' "Feedburner" account and pages (at http://feeds.feedburner.com/RealScienceFriday) and Feedburner;

   iv. Defendants' You Tube account and pages;

   v. Defendants' Facebook account and pages;

   vi. From any website(s), webpage(s), blog(s), board(s), apps, and/or any other digital media distributed or displayed by the Internet which is owned by Defendants or is under Defendants' control.

c. Turn over all bank statements, journals, ledgers, computer statements, accounts receivable statements, and/or shipping documents relating to or evidencing sales of compact discs containing Defendants' "Real Science Friday" programs;

d. Turn over all bank statements, journals, ledgers, computer statements, accounts receivable statements, bills, invoices and/or documents relating to or evidencing sales and/or payments for advertisements on Defendants' "Real Science Friday" programs;

e. Take all necessary steps required to transfer ownership of the www.realsciencefriday.com domain to Plaintiff within 10 days.

WHEREFORE, Plaintiff demands judgment as follows:

1. For a permanent injunction as aforesaid on each cause of action;

2. For an accounting of all the damages suffered by plaintiff and for all of the profits made by Defendants by reason of its unfair competition and infringement of Plaintiff's trade name and service mark as aforesaid and for a judgment in plaintiff's favor against defendant for the damages and profits so determined;

3. For damages in an amount to be determined;

4. Punitive damages in an amount to be determined;

5. Defendants be required to pay to Plaintiff statutory damages in an amount not less than $100,000 pursuant to the Anticybersquatting Consumer Protection Act, 15 U.S.C. §1125(d);

6. For the costs, disbursements and attorneys' fees of this action to be determined;

7. For such other and further relief as the Court may deem just and proper.

Dated: New York, New York
November 2, 2012

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